IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.351 of 2005

Thanikkudam Bagawati Mills Ltd. ...Petitioner

vs.

1. Mrs.Reena Ravindra Khona and others. ...Respondents

Ms.S.Kaushik i/b. M/s.Khaitan & Jayakar, for the Petitioner.

Mr.P.K.Samdhani with S.S.Purohit i/b. Purohit & Co., for Respondents 1 & 2.

CORAM: D.K.DESHMUKH,J.

DATED: 18th April, 2006.

P.C.:-

1. By this petition the petitioner challenges the Award made by the Sole Arbitrator. By that Award, the learned Arbitrator has directed the petitioner to pay certain amount to the claimant. Initially the Award was challenged on the ground that the statement of claim was not filed before the learned Arbitrator. In any case , it was never

served on the petitioner. The matter was argued for some time on that ground. When the matter was being argued on that ground, the learned Counsel appearing for respondents submitted that on that ground the Award may be set aside and that he is willing to go before the learned Arbitrator so that the petitioner can be given an opportunity to file its defence and the matter can be re-heard by the learned Arbitrator. The learned Counsel appearing for petitioner took instructions from the petitioner and has stated that the offer is not acceptable to the petitioner. She stated that the petitioner is willing to argue the petition on the ground that the Award is liable to be set aside on other grounds and not on the ground that the statement of claim was not filed by the claimant. In short, the petitioner has given up the ground that the Award is liable to be set aside because the claimant did not file statement of claim therefore, the Award has been made in breach of the provisions of the Arbitration and Conciliation Act.

2. The learned Counsel appearing for the petitioner submits that the Award is liable to be set aside because the Award is against the public policy of India in as much as it is contrary to the principles of natural justice. The learned Counsel submits that the Award is contrary to the principles of natural justice because the learned Arbitrator has omitted from his consideration the relevant evidence and has taken into consideration irrelevant evidence. But the learned

Counsel appearing for petitioner is not able to show that this ground is raised in the petition as a ground on which the Award is challenged. Obviously therefore, the petitioner cannot be permitted to argue this ground. The learned Counsel further submitted that in view of the evidence which was led before the Magistrate who tried the matter of offence under Section 138 of the Negotiable Instrument Act, the award is liable to be set aside. But the learned Counsel appearing for petitioner is not in a position to show that in the petition this ground also is raised as a ground on which the Award of the learned Arbitrator is challenged and therefore, this ground also cannot be permitted to be argued. If the petitioner wanted to rely on the evidence produced before the Magistrate, proper steps ought to have been taken in that regard. These two grounds on which the learned Counsel appearing for the petitioner tried to argue that the Award is liable to be set aside, cannot be permitted to be argued because they are not raised in the petition. It may be pointed out that a Division Bench of this Court has taken a view that an Arbitration Petition cannot be permitted to be amended so as to raise additional ground to challenge the Award after expiry of period of limitation fixed under section 34(3) of the Arbitration & Conciliation Act. Therefore, if an additional ground cannot be permitted to be raised by the petitioner by amending petition after expiry of the period of limitation, obviously therefore, the grounds which are not raised in the petition cannot be permitted to be

argued. In any case permitting the petitioner to argue grounds which admittedly are not pure questions of law but at best can be termed as mixed questions of law, facts without raising them in the petition will be in violation of the principles of natural justice. Thus, the principal ground on which the award was challenged in the petition has been given up and the two grounds which were tried to be argued can not be permitted to be argued. No other ground was argued. Thus, I find no substance in the challenges raised to the Award. The petition, therefore, fails and is dismissed. The petitioner is directed to pay cost of this petition to the respondents as incurred by the respondents.